

GREENFIRE LAW, PC

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Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

AS YOU SOW, a 501 (c)(3) non-profit
corporation,

Plaintiff,

v.

ETSY, INC., and DOES 1-20, inclusive

Defendants,

Case No.: 24-cv-04203-MMC

**DECLARATION OF DANIELLE FUGERE
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION TO COMPEL ARBITRATION,
OR IN THE ALTERNATIVE, TRANSFER
VENUE**

1 I, Danielle Fugere do declare and state:

2 1. If sworn as a witness, I could and would testify to my personal knowledge of the
3 facts set forth herein.

4 2. I am the President and Chief Counsel for As You Sow (“AYS”), a position I have
5 held since May 7, 2012. Prior to that, I served as Executive Director of the Environmental Law
6 Foundation (“ELF”) for three years, focusing on environmental health and water protection.

7 3. During my career, I estimate that I have been personally involved in hundreds of
8 Proposition 65 matters—some settling out of court before a complaint was filed, others resolving
9 after a complaint was filed. The vast majority of these cases were consumer product exposures.

10 4. AYS’ Proposition 65 related work includes monitoring companies’ compliance
11 with Proposition 65’s warning requirements, including monitoring the sale of skin lightening
12 creams, chocolate products, detergents, herbal supplements, children’s jewelry, sports equipment,
13 electronic earbuds, and other consumer products.

14 5. In determining whether any given consumer product contains a known carcinogen
15 or reproductive toxin, AYS has retrieved product testing results reported and/or conducted by
16 public health agencies, nonprofits, and other organizations. At times, counsel that we have retained
17 have also tested products to verify that they contain known carcinogens or reproductive toxins.

18 6. AYS previously sued Amazon.com, Inc. for selling mercury-containing skin
19 whitening creams through its online website without required warnings. In *Lee v. Amazon, Inc.*, 76
20 Cal.App.5th 200 (a related case), the Court found that test indicating the presence of mercury in
21 individual products at issue could be generalized to other units of that product or similar products.
22 For example, in that case, Plaintiff alleged that Amazon was selling mercury-containing Monsepa
23 cream. The mercury content of Monsepa was established through product testing conducted by the
24 California Department of Public Health, the Department of Justice, and Plaintiff’s counsel. While
25 Monsepa cream was available for sale on Amazon’s website, none of the tests of Monsepa creams
26 were of products actually purchased from Amazon. Because mercury was found in testing of
27 Monsepa skin whitening creams, the Court agreed that these tests were sufficient to establish the
28 Monsepa cream available on Amazon’s website contained mercury.

9. Similarly, AYS' Unfair Competition Law claim, which also is based on ETSY's sale of mercury-containing skin whitening creams, alleges harm to important public interest rights.

11. Neither I nor AYS has directed or authorized Greenfire Law, PC to open up any ETSY accounts on our behalf, to enter into any arbitration agreement with ETSY on our behalf, to agree to this action being litigated in a forum outside of California, or to agree to New York law governing this action.

GREENFIRE LAW, PC

By: /s/ *Danielle Fugere*

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1 Under N.D. Cal. Local Rule 5-1(i)(3), in lieu of a signature, I attest that I obtained
2 approval, on August 15, 2024, from Danielle Fugere for the filing of this declaration.

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4 s/ Rae Lovko
5 Rae Lovko
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